





BY THE HOUSE OF DELEGATES.

MARCH 15th, 1853.

Read and ordered to be printed.

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P E T I T I O N

OF THE

COUNSEL OF ROBERT SWAN

TO THE

HOUSE OF DELEGATES.

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JANUARY SESSION, 1853.  
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## PETITION.

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*To the Honorable,*

*The General Assembly of Maryland:*

The undersigned, Counsel for Robert Swan, against whom an indictment is pending for murder, feel themselves called upon by a sense of duty to their client to take some notice of the reference made to his case, in the recent Annual Message of the Governor of Maryland, to the Legislature. The undersigned design to raise no question about the power of the Governor to appoint special Counsel to assist in public prosecutions, as they ordinarily arise in the counties. This may be all legal and constitutional and proper. But a report to the Executive by the Counsel thus appointed, of what occurred during the prosecution, followed by the Governor's recommendation based upon such report, of further legislation to affect the pending case, the undersigned cannot but regard as startling novelties in the criminal jurisprudence of Maryland.

The Message first states it as a fact, that Robert Swan managed to evade a trial of his case by resorting to a technical point; and then suggests the propriety of passing a law to prevent Robert Swan, and all others, from doing the like in future. The undersigned do not quote the language of the Message, but believe they do not misapprehend its purport; they do not question the motives of the Governor, but they earnestly insist that a pending prosecution against a citizen upon a charge affecting his life, shall not be made the subject of any sort of discussion before the Legislature, and people of the State. Courts and Jurors are the sole tribunals to canvass and settle such matters.

The Governor, as the undersigned regret to perceive, has not been correctly informed as to what occurred in Hagerstown on the occasion alluded to. No technical point, nor indeed any point of any description, was made in behalf of Robert Swan. There was no court to decide any point technical or otherwise, if it had been made. The judge who held the court, kept his seat in the bench, while an informal conversation in reference to the trial took place between the Counsel at the Bar. The prosecution asked the defence whether they were prepared to appoint a judge by the agreement of the parties? The reply was that Robert Swan had no power to consent to the appointment. The same question had been asked of one of the undersigned by the State's Attorney for Allegany county, two weeks before the commencement of the term in Washington county. It was repeated in open court, on the first day of that term; and again repeated, one week thereafter, on the return day of the subpoena issued in the case. To this

question, as often as it was asked, the same answer was uniformly given, namely, that Robert Swan had no power under the law, to create a court competent to try him in Washington county; he had consented to be tried in Allegany; the State had agreed that he should be tried there, and his Counsel believed that he could not, with or without his consent, be tried elsewhere.

The Counsel for the prosecution chose to put this question so often, and on the last occasion in so formal and public a manner, for reasons which were no doubt satisfactory to themselves; but they certainly knew when propounding the question in Washington county, what the answer to it would be; and they knew, also, the reason why no other answer would be given. The case was removed to Washington county for trial by the State, and against the wishes of the defence, who insisted that the Judge presiding at the trial had no power to change the venue. They insisted, moreover, that after the case was removed to Hagerstown there would be no Court there to try it; and it happened just as they had predicted; for although there was a Court holding its regular Term in Hagerstown, on the day named in the recognizance, there was none, by the admission of all parties, to try this cause.

The undersigned were moreover of opinion, and so distinctly declared, that no Court legally competent to try this case in Washington county, could be constituted even with their consent. They entertain the opinion, that the recognizance entered into by Robert Swan and his sureties, for his appearance at Hagerstown, was without warrant of law, and therefore merely void. But they desire distinctly to say, that whenever this indictment shall be called up before a Court competent to pass a valid judgment upon it, he will appear, not only voluntary, but gladly, to take his trial.

The undersigned beg leave respectfully to say in conclusion, that having fully considered the case of their client, they had chosen for themselves the course to be pursued in making his defence. It was their right to be left to pursue that course freely and without molestation, and without being subjected to ingenious misconstructions, put forth in reports and messages, from any quarter however elevated, or prompted by motives, however honest and patriotic. And whether it be expected that the Legislature shall pass an Act, making that a crime, which was no crime before, or an Act enabling the Counsel for the State to try the case in the mode they prefer to try it, instead of that which is alone authorised by the existing laws, it is equally, as the undersigned respectfully insist, a violation of the great principle, which forbids "the enactment of retroactive laws in criminal cases."

WM. PRICE,  
FRANCIS THOMAS,  
GEO. A. PEARRE,  
J. PHILIP ROMAN.

*February 21, 1853.*

# TRANSCRIPT FROM THE RECORD.

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To the Honorable,

*The House of Delegates of the State of Maryland :*

GENTLEMEN :—

In compliance with your order, I herewith transmit to your Honorable body the announcement of His Honor, Judge Perry, as also the two several agreements between Robert Swan, his Attorneys and the State's Attorney for Allegany county :

State of Maryland	} Now in confinement charged with the murder of William O. Sprigg.
vs. Robert Swan.	

To HORACE RESLEY, Esq.,

*Clerk of the Circuit Court for Allegany County :*

SIR :—

It being in my opinion, by reason of the family connexion existing between the above named prisoner and myself, improper for me to preside at his trial, I hereby announce to you, and through you to the parties concerned, that such is my determination, in order that due and legal steps may be taken for the appointment of a proper person to sit in the trial of the said cause.

You are therefore requested to file this paper among the proceedings in the said prosecution, and to give early notice to the parties of the same.

Very respectfully,

Your obedient servant,

THOMAS PERRY.

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Having been apprised of the determination of the Hon. Thos. Perry, not to preside at the trial of Robert Swan, by reason of the connexion between himself and the accused, it is thereupon, this 24th day of April, 1852, by the undersigned, Counsel for the State and for the said prisoner, consented to and agreed, that Joseph I. Merrick, Esq., of Washington county, Maryland, be and he is hereby selected and appointed as a proper person to preside at the trial of the above cause,

JOSIAH H. GORDON,  
*State's Attorney.*

WM. PRICE,  
J. PHILIP ROMAN,  
GEORGE A. PEARRE,  
*Counsel for Robert Swan.*

I consent that Joseph I. Merrick, above named, may act as Judge in the above case against me, on the indictment found against me by the Grand Jury of the State of Maryland, for the body of Allegany county, for the murder of William O. Sprigg, according to the Act of Assembly in such case made and provided.

ROBERT SWAN.

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I consent on behalf of the State of Maryland to the above arrangement.

JOSIAH H. GORDON,  
*State's Attorney for Allegany County.*

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*Maryland, Allegany County, Ss.*

I hereby certify that the foregoing is truly taken from the record of proceedings of the Circuit Court for Allegany county, Maryland.

In testimony whereof I hereunto subscribe my name, and affix  
 \*\*\*\*\* the seal of said Court, at Cumberland, Maryland,  
 \* SEAL \* this first day of March, in the year eighteen hundred  
 \* \* \* \* \* and fifty-three.  
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H. RESLEY,  
*Clerk of the Circuit Court for Allegany County.*





